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United States General Accounting Office

GAO

Briefing Report to Congressional Requesters

May 1988

AIRCRAFT PRESERVATION

Preserving DOD Aircraft Significant to Aviation History



136039

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United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-229006

May 31, 1988

The Honorable Norm Dicks
The Honorable Tony P. Hall
House of Representatives

In response to your request, we have reviewed (1) whether the National Historic Preservation Act is adequate to ensure that the Department of Defense (DOD) considers historic preservation when taking actions that affect aircraft with significance in U.S. aviation history and (2) whether DOD is taking adequate steps to ensure preservation and public access to its aircraft with significance in U.S. aviation history. You stated that your concern stems from attempts by your Offices to preserve a Vietnam era F-4D aircraft (serial no. 66-7463). The aircraft is currently displayed outdoors at the Air Force Academy in Colorado Springs, Colorado, without its engine and several other "usable" parts. The F-4D was used to shoot down six enemy aircraft in Vietnam, and the Air Force's only pilot ace (a fighter pilot officially credited with shooting down five or more enemy aircraft) of the Vietnam conflict scored his first and fifth victories with the aircraft.

On January 15, 1988, we briefed your representatives on the results of our work, and this report summarizes and updates the material presented during that meeting.

We believe that the act applies to DOD aircraft. The act states that heads of federal agencies, with the advice of the Secretary of Interior and in cooperation with the State Historic Preservation Officer, locate, inventory, and nominate to the Secretary of Interior all buildings, sites, districts, structures, and objects under their jurisdiction or control that appear to qualify for listing on the National Register of Historic Places. (The National Register is an authoritative guide to be used by federal, state, and local governments and private groups and citizens to identify the nation's cultural resources and to indicate what properties should be protected from destruction or impairment.) During our review, DOD advised us that the act would apply to aircraft only in the most unusual circumstances. However, in its comments on a draft of this

report, DOD stated that it would consider the report's observations and findings during the next review of its policies pertaining to historic resources management.

Federal agencies undertaking a project that affects a property listed on the National Register or one that is eligible for the National Register must give the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. The Advisory Council is an independent agency that advises the President and the Congress on historic preservation matters and comments on federal activities affecting properties included in or eligible for inclusion on the National Register.

National Park Service Regulations implementing the act provide that any person or organization may submit a request for nomination of property to the National Register that the person or organization believes will meet National Register criteria. The agency controlling the property must respond to the request, and if it decides not to nominate the property to the National Register, the person or organization may appeal the decision to the Keeper of the Register. The Keeper of the Register has been delegated authority by the National Park Service, a bureau of the Department of Interior responsible for administering the National Register Program, to list properties and determine their eligibility for the National Register. The decision of the Keeper of the Register is the final administrative action on appeals.

National Park Service Guidelines permit DOD to nominate aircraft with historic significance for listing on the National Register. However, DOD has not nominated any aircraft to the National Register. DOD's position provided (see app. III) is that the act does not apply to the F-4D aircraft and that only under the most unusual circumstances would it apply to any aircraft. DOD believes that an aircraft is considered as an "object" under the guidelines and therefore must be located in an appropriate historic setting (aircraft on display or in museums are not eligible for the National Register) and, as indicated in the guidelines, that an aircraft must be 50 years old to be eligible for the National Register unless the aircraft is of exceptional importance. DOD believes the F-4D is not located in an appropriate historic setting and that its significance in U.S. aviation history is not sufficient to overcome the rule that property less than 50 years old should not be nominated to the National Register.

Officials of the National Park Service and Advisory Council stated that the act does apply to aircraft and that aircraft do not have to be located in an appropriate historical setting, since an aircraft by its nature is intended to be movable. In September 1986, the National Park Service amended its guidelines to provide expressly that aircraft are eligible as "structures" for nomination to the National Register. Under the definition of structure, there is no expressed requirement that the item be located in a historic setting.

Although the four military services--the Air Force, the Army, the Navy, and the Marines--have not nominated any aircraft to the National Register, our visits to the Air Force Museum (the largest of all of the service museums) and the Marine Corps Museum indicated that the services are preserving and displaying those aircraft in their museum collections that they have identified as the most significant in U.S. aviation history. Access to all the services' museums is free of charge to the public.

With regard to the preservation of the F-4D, DOD stated

"The engines and some other 'save list' items were removed from it at Peterson Air Force Base before towing it to the Academy...[and] no damage was done in the process.... It is unlikely that many of the removed components are the exact items that were in the plane in Southeast Asia. Outside display [of the F-4D] in a semi-arid climate, in the very center of the Academy, will not damage the plane or its historic character. On the contrary, it has been repainted in its Southeast Asia colors and will be maintained in at least as good condition as it would be in any museum."

"It is displayed, freshly painted, on the cadet quadrangle. It appears to be resting on the ground, but its weight is actually supported by steel rods running through the landing gear axle holes. Thus, the tires are slightly off the ground, but no part has been altered or damaged."

Details on our findings are described in appendixes I and II.

In conducting our review, we interviewed key officials in the Office of the Secretary of Defense and the military services, including Preservation Officers or their designees; Museum Curators; the Directors of the Air Force,

the Navy, and the Marine Corps national museums; and the Director of the Army Museum Program, Center for Military History, Washington, D.C. (The Army does not yet have a national museum.) We also interviewed responsible officials of the Advisory Council on Historic Preservation and the National Park Service. We did not address whether DOD should nominate aircraft still assigned a mission role in the services' active inventory to the National Register.

We visited the Air Force Museum in Dayton, Ohio, and the Marine Corps Air-Ground Museum in Quantico, Virginia, to obtain information regarding their roles in preserving and displaying aircraft with significance in U.S. aviation history. We did not visit the F-4D on location at the Air Force Academy in Colorado Springs, Colorado, to determine the adequacy of its preservation and access to the public. We reviewed relevant material, such as the National Historic Preservation Act and the implementing regulations and guidelines. Our work was conducted from June 1987 to January 1988 in accordance with generally accepted government auditing standards.

A draft of this report was provided to DOD for its review and comment. Its comments have been incorporated where appropriate.

As agreed with your Offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 7 days from its issue date. At that time, we will send copies to the Secretaries of Defense, the Air Force, the Army, and the Navy, and other interested parties upon request.

If we can be of further assistance, please contact me on 275-4268.



Harry R. Finley
Senior Associate Director

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IS THE NATIONAL HISTORIC PRESERVATION ACT ADEQUATE TO ENSURE THAT
DOD CONSIDERS HISTORIC PRESERVATION WHEN TAKING ACTIONS THAT
AFFECT AIRCRAFT WITH SIGNIFICANCE IN U.S. AVIATION HISTORY?

The National Historic Preservation Act permits the Department of Defense (DOD) to nominate aircraft with historic significance for listing on the National Register of Historic Places, which is an authoritative guide that identifies cultural resources in the United States. Once on the National Register, any aircraft would be treated equally with other properties on the National Register. However, neither DOD, nor anyone else, has nominated any DOD aircraft for the National Register.

National Park Service Guidelines, which implement the act, state that historically mobile "objects" should be located in an appropriate historic setting, and objects relocated to a museum are generally inappropriate for listing on the National Register. Before 1986, the guidelines did not list aircraft as objects and hence eligible for nomination to the National Register. However, the National Park Service stated that aircraft were covered by that term, and in September 1986 it amended the guidelines to provide expressly that aircraft are eligible as "structures" for nomination to the National Register. Under the definition of structure, there is no expressed requirement that the historic item be located in a historic setting; therefore, the historic setting of the aircraft is not a relevant issue.

In addition, the guidelines state that a property under 50 years old is eligible for the National Register only if it is of exceptional importance. According to National Register Publication 2, dated Summer 1979, an example of a structure under 50 years old that is listed on the National Register and considered exceptionally important is Dulles Airport in Virginia, which was constructed in 1962, because it is considered by the American Institute of Architects to be the third most significant architectural masterpiece in the United States' first 200 years. However, a key official of the Advisory Council on Historic Preservation believes that the F-4D's significance may be sufficient to overcome the rule that property less than 50 years old should not be nominated because, in the official's view, it is exceptionally important. A key National Park Service official believes the age of the F-4D could be an issue if the F-4D was nominated to the National Register.

DOD believes that the act does not apply to the F-4D aircraft and only under the most unusual circumstances would it apply to any aircraft. Based on its interpretation of the guidelines, DOD believes only those aircraft that are located in an appropriate

historic setting can be nominated to the National Register, and it does not consider aircraft on display or in museums to be eligible for nomination. DOD also does not believe that the term object applies to the F-4D because it is not located in an appropriate historic setting, and it believes that the F-4D is not of exceptional importance to overcome the rule that property less than 50 years old should not be nominated.

If DOD aircraft are nominated for the National Register, DOD is subject to the Advisory Council's oversight when it takes actions that affect the aircraft. The act's regulations provide that federal agencies undertaking a project affecting property listed or eligible for inclusion on the National Register must afford the Advisory Council a reasonable opportunity to comment on the undertaking.

If DOD elects not to nominate aircraft for the National Register, the act's regulations provide that any person or organization may submit a request for nomination of property to the National Register that the person or organization believes will meet National Register criteria. The request for nomination is submitted to the State Historic Preservation Officer for the state in which the property is located or to the Federal Preservation Officer for the agency that has jurisdiction over the property. In special cases when there is no approved state program or federal jurisdiction over the property, local government officials or members of the general public may directly nominate properties to the National Register. If the nominating authority (State or Federal Preservation Officer) refuses to nominate property that the person or organization requested for nomination to the National Register, that the person or organization believes will meet National Register criteria, the person or organization can appeal this decision to the Keeper of the Register; If the appeal is sustained, the Keeper of the Register will require the nominating authority to submit the nomination for review.

IS DOD TAKING ADEQUATE STEPS TO ENSURE PRESERVATION
OF AND PUBLIC ACCESS TO AIRCRAFT WITH
SIGNIFICANCE IN U.S. AVIATION HISTORY?

The four military services use subjective judgment to determine if an aircraft is significant to aviation history. The criteria used to make this determination vary among the services; there is no specific written criteria. Based on discussions with top level officials from each service and visits to some of the national museums, particularly the U.S. Air Force Museum, the services are preserving and displaying those aircraft they have identified as most significant and they are preserving and displaying other aircraft they consider important to their aviation heritage. We noted the following:

- Most aircraft in the services' collections are generic, but several are specifically (1) associated with a historic event or person or with setting some type of record or (2) one or the last of a type or class of significant aircraft. Generally, the services consider these aircraft as being the most important.
- The Air Force considers 9 of over 1,400 aircraft in its collection to be the most significant, including the F-4D.
- The Army considers about 29 of approximately 360 aircraft in its collection to be the most significant.
- The Marines considers 6 of approximately 111 aircraft in its collection to be the most significant.
- The Director of the Navy's national museum considers the Navy's entire collection of 155 aircraft as equally significant.

Based on discussions with Museum Directors and/or Curators for the services, we found out that generally the most significant aircraft are fully restored and preserved first and that the Air Force, the Army, and the Marines each named one significant aircraft that needs some type of restoration work. The Navy stated that all of its aircraft specifically associated with a historic event, person, or record are in good condition.

The DOD Museum Directors and/or Curators also stated that generally the most significant aircraft are indoors or under cover. Seven of the Air Force's nine most significant aircraft are indoors at the U.S. Air Force Museum. One is displayed under cover at another location, and only the F-4D at the Air

Force Academy, is displayed outdoors. Three of the Marine Corps' six most significant aircraft are displayed indoors at the Marine Corps Air-Ground Museum, one is displayed indoors at another location, one is outdoors at another location, and one is being restored at the museum. Access to all aircraft displayed is free of charge to the public.

With regard to the preservation of the F-4D, DOD stated

"The engines and some other 'save list' items were removed from it at Peterson Air Force Base before towing it to the Academy...[and] no damage was done in the process.... It is unlikely that many of the removed components are the exact items that were in the plane in Southeast Asia. Outside display [of the F-4D] in a semi-arid climate, in the very center of the Academy, will not damage the plane or its historic character. On the contrary, it has been repainted in its Southeast Asia colors and will be maintained in at least as good condition as it would be in any museum."

"It is displayed, freshly painted, on the cadet quadrangle. It appears to be resting on the ground, but its weight is actually supported by steel rods running through the landing gear axle holes. Thus, the tires are slightly off the ground, but no part has been altered or damaged."

DOD'S POSITION ON THE APPLICABILITY OF THE
NATIONAL HISTORIC PRESERVATION ACT TO AIRCRAFT

Note: GAO's comment appears at the end of this appendix.



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D.C. 20301-1600

October 20, 1987

*noted
G/C 10/23/87*

Mr. Gary L. Kepplinger
Assistant General Counsel
General Accounting Office
Washington, DC 20548

RE: B-22900G

Dear Mr. Kepplinger:

This is in response to your letter dated September 4, 1987 asking for the position of the Department of Defense on four questions regarding the National Historic Preservation Act, as amended, Pub. L. 89-665, 80 Stat. 915, 16 U.S.C. § 470.

Our position is that the Act does not apply to objects such as the F-4D aircraft (Serial No. 66-7463). More detailed answers to your questions are contained in the enclosed October 16, 1987 memorandum from the Assistant General Counsel (Installations) of the Air Force.

Please let me know if you need any further assistance.

Sincerely,

Dennis H. Trosch
Assistant General Counsel
(Logistics)

Enclosure
w/o Attachments 2 and 3



OFFICE OF THE GENERAL COUNSEL

DEPARTMENT OF THE AIR FORCE
WASHINGTON, D. C. 20330-1000

October 16, 1987

MEMORANDUM FOR ASSISTANT GENERAL COUNSEL (LOGISTICS)
OFFICE OF THE SECRETARY OF DEFENSE

SUBJECT: F-4D at the Air Force Academy

This is in response to your letter of September 14, 1987 concerning the GAO inquiry on this matter. GAO asked for a DOD position on whether the National Historic Preservation Act, 16 U.S.C. 470-470w-6 (the "Act") applied to airplanes, and raised three specific questions about what happened with respect to the F-4D now located at the Air Force Academy in Colorado Springs. You asked us to reply to the specific questions. Since we did not consult with any State Historic Preservation Officer (SHPO) or with the Advisory Council on Historic Preservation, our reply to their "why not" questions is also our proposed answer to question 1. We do not believe that the Act applies to this plane, and only under the most unusual circumstances would it ever apply to an airplane.

I. Background

The aircraft in question, F-4D # 66-7463, was used for 6 MIG kills over Viet Nam. One pilot and one backseater became aces in it, on separate occasions. Portions of the plane appear in their portraits, which are on the 4th floor, ninth corridor, outside 4C-948. Despite its notable accomplishments, the plane continued to serve as an active force line aircraft, most recently at Homestead, AFB, FL. It was scheduled for transfer to the Air National Guard for further service with a Guard unit, reaching retirement in the early 1990's. Instead, the Secretary and the Chief of Staff approved the Academy Superintendent's strong request to display the "Ace" F-4D at the Academy. It was diverted to the Academy about when it would otherwise have gone to the Guard. The engines and some other "save list" items were removed from it at Peterson AFB before towing it to the Academy. It is displayed, freshly painted, on the cadet quadrangle. It appears to be resting on the ground, but its weight is actually supported by steel rods running through the landing gear axle holes. Thus, the tires are slightly off the ground, but no part has been altered or damaged.

The staff of the Air Force Museum, located at Wright-Patterson AFB, Dayton, Ohio, has been tracking this aircraft since 1974. It placed a "hold" on it in the record system to assure that the plane went to the Museum instead of the Davis-Monthan boneyard on final retirement. Dayton-area friends of the Museum brought the Superintendent's request to the attention of Congressman Tony Hall (D-Ohio). After considerable correspondence and meetings with the Air Force, he brought in the GAO.

On December 19, 1986, about the time of the initial contacts with Congressman Hall, an official from the Advisory Council on Historic Preservation advised the Air Force Museum that the F-4D was "potentially eligible" for listing. It observed that the "relocation" of the plane from Wright-Patterson AFB to the Academy and its display at an outdoor site "may require that your agency obtain the comments of the Council," citing the National Historic Preservation Act and regulations in general but not by specific section. The Advisory Council was factually in error; the plane was not at Wright-Patterson.

II. Eligibility of An Aircraft for National Register Listing

The Act's provisions have never been applied to Air Force "historic aircraft," in the sense of placing them on the National Register of Historic Places. However, an aircraft could be eligible for National Register listing if it met the criteria set out in Department of Interior, National Park Service, regulations at 36 C.F.R. § 60.3. The B-29 "Enola Gay", a Smithsonian Institution asset, is on the National Register. As we will see, however, it is very unlikely that many other aircraft will ever be Register eligible.

See comment 1.

The full scheme for National Register Listing is very complex. An outline of the various criteria is at attachment 1 for reference. The register includes "objects" as well as geographic "places". An "object" is defined as "...a material thing of functional, aesthetic, cultural, historical, or scientific value that may be, by nature or design, movable yet related to a specific setting or environment." 32 C.F.R. 60.3(j); underscoring added.

In our opinion, the "Ace Plane" does not meet this restrictive definition of "object". While the words "setting or environment" are not defined in the regulations, each of the objects given as examples in the Regulations is clearly related to a particular setting, if not specific map coordinates. The "Delta Queen" steamboat is associated with the Mississippi/Ohio River system; the Adams Memorial (the statue "Grief") with Rock Creek Cemetery; and the Sumpter Valley Gold Dredge with the placer mines of Eastern Oregon. The relationship to place was intentional, to avoid listing millions of museum pieces that are well looked after and need no special recognition.

The meaning of "object" is clarified by National Park Service Bulletin No. 15, "Guidelines for Applying the National Register Criteria for Listing". In Chapter II, "How to Define Categories of Historic Properties", at pp 7-8, the following guidance is provided:

Objects relocated to a museum are inappropriate for listing in the National Register of Historic Places.

Historically mobile objects must be located in an appropriate setting whether they remain mobile or fixed at a permanent location.

Large mobile objects such as steamboats are eligible for listing in the National Register of Historic Places; however, small objects not designed for a specific location are normally not eligible. For example, a monument or a fixed piece of sculpture would possess association with a specific place, whereas transportable works of sculpture, furniture, and other decorative arts would not.

Chapter V, How to Determine if a Property has Integrity, contains further relevant guidance.

The concept of [historical] integrity applies to potential nominees for listing in seven ways: location, design, setting, materials, workmanship, feeling and association. A property will always possess at least two, and usually more than two, of these kinds of integrity. Integrity of location, design, and so on, depend on the retention of various physical characteristics that make up a property.

This chapter provides detailed "Guidelines for Assessing Integrity in Properties". Several relevant selections are set out below.

"Eligible

Not Eligible

Cultural materials removed from their site context and displayed as museum collections are not eligible because they no longer retain their historic physical context—that is, the location and setting of use or deposition that is provided by direct association with their original site.

A property significant only for historic association with an event, historic pattern, or person(s) is eligible if it remains in the place where it was during its important association and if it retains enough of its historic appearance to recall that association. For this type of property, integrity of

location is essential, with the result that occupying its historic location is a characteristic that is necessary for the property to represent its theme."

Certain properties are not eligible for Register listing even if they possess "integrity" and otherwise meet criteria. The "Criteria Considerations" address these specific types of prima facie ineligible property, establishing additional criteria that must be present for them to be considered for listing. "Moved properties" are normally ineligible (Consideration (b)). The Guidelines for Considering Moved Properties, at p. 52, address the question of movable properties, such as airplanes.

- "6. A property designed to move or a property frequently moved during its historic use must be located in a historically appropriate setting in order to qualify.

A property designed to move or a property frequently moved during its history may be eligible if it has retained integrity of setting, feeling, and association in addition to integrity or design. Properties of this kind that could qualify are a ship in the water in a harbor setting, a locomotive on tracks or in a railyard, or a bridge relocated from one stream to another.

A property designed to move or a property frequently moved during its history is not eligible under criterion A,B, or C if it has lost its historic setting. Examples are a World War II submarine placed in a park, a covered bridge in a pasture for use as a farm structure, or a locomotive displayed in an indoor museum setting.

Property under 50 years of age does not qualify for listing unless it is "of exceptional importance." (Consideration (g)). This is perhaps the most critical criterion for the Ace Plane. It is only 21 years old and, but for the Superintendent's request, would still be in active service with the Air National Guard. This subject is dealt with the Bulletin No. 15, from which we have been quoting at some length. It is also the subject of an entire Bulletin, No. 22, entitled "How to Evaluate and Nominate Potential National Register Properties that Have Achieved Significance Within the Last Fifty Years." The reason for the 50-year rule is stated in Bulletin 15, at page 62:

"Fifty years is a general estimate of the period of time necessary to evaluate significance. This consideration guards against listing of properties of passing contemporary value, and ensures that the register is a list of historic places."

Bulletin 15 itself contains the basic guidance on what constitutes "exceptional importance". Bulletin 22 provides more detail and a number of examples. Portions of the Bulletin 15 Guidelines are quoted here.

- *3. The phrase "exceptional importance" may be applied to the extraordinary importance of an event or to an entire category of resources so fragile that survivors of any age are unusual.

Properties listed that had attained significance in less than fifty years include: the launch pad at Cape Canaveral from which men first traveled to the moon, the home of nationally prominent playwright Eugene O'Neill, and the Chrysler Building (New York), significant as the epitome of "style moderne" architecture. Properties less than fifty years old that qualify as exceptional because the entire category of resources is fragile include a recent example of a traditional sailing canoe in the Trust Territory of the Pacific Islands, where because of the rapid deterioration of materials, no working Micronesian canoes exist that are more than twenty years old...

Properties less than fifty years old would not be eligible unless they had exceptional importance within the relevant historical context. Nor would they be eligible if the relevant category of resources were not, as a whole, so fragile that their survival span is normally less than fifty years. Properties that by nature can last more than fifty years cannot be exceptional in this sense.

- *5. In justifying exceptional importance, it is necessary to identify other properties in the geographical context that portray the same values or associations and determine which properties best illustrate or represent the historical themes in question. Several properties may become eligible with the passage of time, but very few will qualify as exceptionally important.

Properties associated with World War II must be identified and evaluated to determine which ones in an area could be judged exceptionally important. For examples, in a community where a military base was located, the base may have played a major role in the conduct in the conduct of the war, in troop training or preparation, or in coastal defense activities; or the presence of the facility may have had an enormous impact on the local

Although many properties associated with World War II may qualify when they are fifty years old, only a few are likely to be of exceptional importance. Based upon scholarly research and evaluation that includes comparison with other World War II properties, if a property is important in its context but

economy during the war years. War time activity may also be reflected in other properties in the community. However, at this time the military base itself would be more likely to be of exceptional importance because it would be a better illustration of the war effort in that community. (Other properties in the community might be evaluated for eligibility once more time had passed.)

not exceptional it cannot yet qualify for the National Register.

The National Park Service has published Bulletin No. 20, "Nominating Historic Vessels and Shipwrecks to the National Register of Historic Places". It systematically applies all the Register criteria to the special case of vessels. These, like airplanes are "movable objects." Some relevant excerpts are included at attachment 2.

The inescapable conclusion from this collection of regulations, guidelines, criteria, and considerations is that a 21 year-old airplane located in a non-typical setting is ineligible for the National Register of Historic Places. That does not make it "non-historic" or unworthy of honor and respect. In fact, the real argument over the F-4D has been location - whether the Air Force Academy or the Air Force Museum was a more appropriate place to display it. Neither of those locations provides an "appropriate setting", as used in these guidelines. Obviously, this is not intended to disparage either location. They are not, however, airfield flight lines or other "places" where one would expect to find an airplane. Moreover, while the plane is important to the history of the Air Force, it is difficult to say that it is of such "exceptional importance" as to qualify for the exception to the 50-year rule. Most World War II objects are still excluded for lack of historical perspective. True, one World War II airplane, not even intact and presently located in a warehouse, is nevertheless Register-listed. But the Enola Gay, in a real sense, changed the world by dropping the first nuclear weapon in combat. With great respect to the under-appreciated aircrews from the Viet Nam War, the historical significance of the Ace Plane is not equivalent.

Our conclusion, therefore, is that this plane does not qualify for nomination to the Register. It is not an object located in an appropriate historical setting, and its significance is not sufficient to overcome the 50-year rule.

III. Consultation with the State Historic Preservation Officer

Turning to the procedural issues, Federal agencies are required to have programs to locate, inventory, and nominate, in cooperation with the State Historic Preservation Officer (SHPO),

all properties under the agencies authority and control "that appear" to qualify for inclusion in the National Register. A separate provision of the Act and separate regulations create specific duties. Section 106 of the Act, 16 U.S.C 470f, provides:

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal [sic] or federally [sic] assisted undertaking in any State ... shall, prior to the approval of the expenditure of any Federal funds on the undertaking ..., take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under [this Act] a reasonable opportunity to comment with regard to such undertaking.

This provision creates a "procedural requirement" that can be enforced in Federal District Court. Like NEPA, relief is limited to injunction pending consultation, with the final decision resting with the agency. The Advisory Council has issued regulations at 36 C.F.R. 800 et. seq. The Council's right to be consulted is delegated to the SHPO's.

Under these regulations, the "Agency Official" must first determine that a proposed activity is an "undertaking." 36 C.F.R. 800.4. If he makes that finding, then the agency must, in consultation with the SHPO, make a good faith effort to identify historic properties that may be affected by the undertaking. The agency and the SHPO then apply the eligibility criteria to determine if properties that may be affected are eligible. It turns out, however, that the regulations are somewhat circular in nature, and not easy to apply.

"Undertaking" is defined as an activity that can result in changes in the character or use of "historic properties, if any such properties are located in the area of potential effects." 36 C.F.R. 800.2(o). "Historic properties" are properties "that meet" DOI's eligibility criteria. 36 C.F.R. 800.2(e). The regulation specifically says "meet", not "may meet" or "could meet". Similarly, Section 106 applies to properties that "are listed" or "are eligible for listing". Thus, the question comes back to how clearly does a property like the F-4D meet eligibility criteria. The analysis set out above leaves little room for doubt that the F-4D is not eligible for listing, and therefore does not qualify as an "historic property" for consultation purposes. The plane is not in an appropriate setting, nor would it be at the Air Force Museum, and no exception to the 50-year rule would be justified.. Therefore, there is no "historic property" to be the subject of an "undertaking".

Preparation of the aircraft and its display at the Academy is not an "undertaking" from another perspective. These activities will not affect the plane's "historic character". Accordingly, these activities could not constitute an "undertaking" that would

require consultation with the SHPO. While certain items were removed from the aircraft, including the engines, no damage was done in the process. When this equipment becomes surplus with the retirement of the F-4 aircraft, it can be replaced. It is unlikely that many of the removed components are the exact items that were in the plane in Southeast Asia. Outside display in a semi-arid climate, in the very center of the Academy, will not damage the plane or its historic character. On the contrary, it has been repainted in its Southeast Asia colors and will be maintained in at least as good condition as it would be in any museum.

The premise of the Advisory Council regulations is that "historic properties" are associated with a specific place. They are not well adapted to the concept of historic objects that have no geographic context. In effect, they begin with the premise that a geographic area may be historic, and then require consultation with the SHPO on whether items within that area, or the area itself, are eligible for listing. 36 C.F.R. 800.2(o). The key issue is not some free-floating concept of "historic", but Register-eligibility. The atmospherics of the regulations strongly encourage an agency to decide the threshold question of eligibility in consultation with the SHPO, but they do not mandate an agency to do so. Here, the question of eligibility scarcely arises, once the details of the law and regulations are fully understood. The words like "historic" and "undertaking", which have broad common meanings, are defined much more narrowly in the National Historic Preservation Act than in common speech. Thus, the Ace Plane is "historic", and towing it to the Academy was an "undertaking", in the common sense. But the plane is not Register-eligible nor was towing it the type of undertaking that required consultation by the SHPO.

Our answers to the questions posed by GAO are as follows:

- (1) Generally, does DOD consider aircraft "objects" as that term is used in the Act and, consequently, eligible for inclusion in the National Register? Why or why not.?

While an aircraft could be an "object" for National Register purposes, it would be so only if located in an appropriate setting. Aircraft on display or in museums are not Register-eligible. We do not know the circumstances surrounding the listing of the "Enola Gay." It may have preceded the current criteria. The "Enola Gay" is of such extraordinary importance that it is understandable that it appears on the Register even if it fails some of the criteria. Probably no other aircraft but the Wright brothers Kitty Hawk plane could compare. That plane is in the Smithsonian Museum but not on the Register.

- (2) If so, did the Air Force apply the criteria specified in 36 C.F.R. § 60.4 (1986) to decide whether the aircraft in question was eligible for inclusion in the National

Register? What reason(s) persuaded the Air Force that the aircraft was or was not eligible for inclusion in the National Register.

The Air Force, having carefully researched the criteria, is of the opinion that the F-4D Ace Plane, while undoubtedly an important part of Air Force history, is not eligible for inclusion in the Register, for the reasons set out above.

(3a) Is the removal of original components and the outside display of the aircraft at the Air Force Academy an "undertaking" as that term is used in the Act and regulations? Why or why not?

It was not an "undertaking," since the aircraft is not a "historic property" and the preparation for display did not affect its historic character, as those terms are used in the applicable regulations. In fact, the historic character was enhanced by repainting to Southeast Asia colors.

(3b) If it is an undertaking, what comments, if any, did the Advisory Council provide?

Not applicable as a result of the answer to 3a.


Grant C. Reynolds
Assistant General Counsel

- 3 Atch
- 1. National Register Eligibility for Listing Categories
- 2. National Register #15
- 3. National Register #20, Nominating Historic Vessels

NATIONAL REGISTER OF HISTORICAL PLACES

Eligibility for Listing

Categories

1. A property may consist of:
 - districts
 - sites
 - buildings
 - structures
 - objects (when located in an appropriate setting)

Context

2. The property must be significant in American history, architecture, archeology, engineering, or culture

Integrity

3. It must possess integrity of:
 - location
 - design
 - setting
 - materials
 - workmanship
 - feeling
 - association (called the Seven Integrities)

Criteria of Significance

4. And the property must be
 - associated with significant historic events
 - associated with significant (non-living) persons
 - have distinctive characteristics of a type
 - or must have yielded information important in pre-history or history

Criteria Considerations

5. These consist of special cases of properties otherwise not eligible; they include:

Atch 1

- property achieving significance in last 50 years normally excluded, but one can be considered if it is "of exceptional importance"

From National Register Bulletin #15, "Guidelines for Applying National Register Criteria

GAO COMMENTS

1. According to the National Park Service, the Enola Gay is not listed on the National Register.

COMMENTS FROM THE ACTING DEPUTY ASSISTANT
SECRETARY OF DEFENSE (ENVIRONMENT)



THE OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON D.C. 20301-8000

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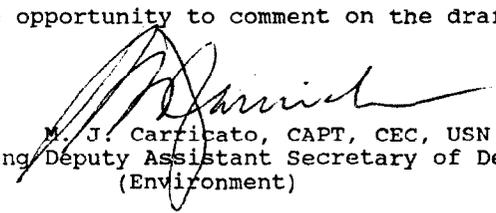
Mr. Frank C. Conahan
Assistant Comptroller General
National Security and
International Affairs Division
US General Accounting Office
Washington, DC 20548

Dear Mr. Conahan:

This is the Department of Defense response to the General Accounting Office draft report, "Aircraft Preservation: Preserving DoD Aircraft Significant to Aviation History," March 17, 1988 (GAO Code 392344/OSD Case 7563).

We have reviewed the report and find only one error. On pages 1 and 6, and in the draft letter to Congressmen Dicks and Hall, Fort Collins should be changed to Colorado Springs which is where the Air Force Academy is located. We will consider the report's observations and findings during the next review of DoD policies pertaining to historic resources management.

Thank you for the opportunity to comment on the draft report.


M. J. Carricato, CAPT, CEC, USN
Acting Deputy Assistant Secretary of Defense
(Environment)

(392344)

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